

EXHIBIT A

Sep-22-2015 07:35 AM JP Morgan Chase 214-626-0176

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09-21-'15 14:33 FROM-JLC LAW OFFICES

9495423672

T-807 P0604/0013 F-263

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FILED

SEP 16 2015

JAMES M. KELLY, County Executive Officer
MARIN COUNTY SUPERIOR COURT
By R. Smith, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN

10 JEAN FRANKEN

11 Plaintiff,

12 vs.

13 JP MORGAN CHASE BANK, NATIONAL
ASSOCIATION, MTC FINANCIAL, dba
14 TRUSTEE CORPS., As Foreclosing Trustee

15 Defendants

16 Case No.: C 1503409

17 PLAINTIFF'S CAUSE OF ACTION FOR
18 VIOLATION OF CALIFORNIA CIVIL CODE
§ 2922.5

19 LIMITED JURISDICTION
Amount is less than \$25,000.00

BY FAX

20 **PLAINTIFF'S COMPLAINT**

21 Plaintiff Jean Franken, (hereinafter referred as "Plaintiff"), by and through undersigned counsel, and
22 per a Notice of Default ("NOD") and Notice of Trustee sale ("NOTS") filed by Defendants on Plaintiff's
23 sister, Nancy Giretti, herein alleges causes of action for violation of California Civil Code § 2922.5
24 §2923.6, §2924.11, and in support would state:

25 "

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PARTIES

2 1. Plaintiff is a resident of the County of Marin, State of California and the lawful owner, by her
 3 succession in interest, of a parcel of Real Property, (hereinafter "Subject Property"), commonly known as:
 4 603 Galerita Way, San Rafael, CA 94903.

5 2. The Subject Property is located in Marin County, State of California.

6 3. Through belief, Defendant, ("Defendant"), JP Morgan Chase Bank, National Association
 7 ("JPMORGAN"), is a corporation organized and existing under the laws of New York.

8 4. At all relevant times, JPMORGAN has transacted and continues to transact business throughout the
 9 State of California, including Marin County.

10 5. Through belief, Defendant, ("Defendant"), MTC Financial, dba Trustee Corps. ("MTC"), is a non-
 11 judicial "foreclosure mill" organized and existing under the laws of California and is the purported
 12 foreclosing trustee on the subject property.

13 6. At all relevant times, MTC has transacted and continues to transact business throughout the State of
 14 California, including Marin County.

15 7. MTC Financial dba Trustee Corps has been sued so many times due to its unscrupulous business
 16 practices, have changed its name several times, yet still continues to operate as a 'Foreclosure Mill'

20

JURISDICTION AND VENUE

21 8. This Court has both personal and subject matter jurisdiction to hear this case.

22 9. Plaintiff is a resident of Marin County.

23 10. The subject property is located within the territorial limits of Marin County.

24 11. Furthermore, the Defendants' acts, and each of them, took place within the territorial limits of Marin
 25 County, and therefore both Venue and Jurisdiction are proper. See ¶¶ 1-7, *supra*.

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FIRST CAUSE OF ACTION - VIOLATION OF CALIFORNIA CIVIL CODE §2923.5

12. Plaintiff brings this action concerning a residential non-judicial foreclosure arising out of a
3 promissory Note and Deed of Trust ("DOT") executed on the Subject Property at issue by Plaintiff's sister
4 Nancy Garrett.

13. Nancy Garrett passed away on April 1, 2014, while in the midst of transferring the Loan into
6 Plaintiff's name.

14. A true and correct copy of a responsive letter sent by Defendant JPMORGAN corroborating this
9 material fact is attached hereto.

15. Defendant JPMORGAN's letter was sent after the death of Plaintiff's sister, and after the NOD was
11 recorded, as more particularly described *infra*.

16. On or about May 14, 2013, more than one year after the death of the borrower, Defendant MTC, in its
14 alleged capacity as foreclosing trustee, recorded a NOD in the Marin County recorder's office as instrument
15 number 2015-0022995.

16. A true and correct copy is attached herewith and incorporated fully.

18. The purported document was signed by Amy Lemus, as Authorized Signatory for Trustee on May 12,
19 2015.

20. A Declaration of non-compliance with California Civil Code §2923.5(f) was signed on March 16,
21 2015 by Clement J. Durkin, on behalf of Defendant JPMORGAN.

22. A true and correct copy is attached herewith and incorporated fully.

24. In said Declaration, Durkin stated under oath that he, "...tried with due diligence but was unable to
25 contact the borrower ..."

26. Notwithstanding the undisputed material fact that the borrower had been deceased for more than one
27 year at the time of the NOD recording, Defendant JPMORGAN had Plaintiff's information, and had it's
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1 employees actually attempted to contact the successor in interest borrower, they would have had no issue
2 whatsoever.

3 23. In fact, as evidenced by Defendant JPMORGAN's own letter, it had Plaintiff's contact information,
4 name, address of record, telephone number and email address.

5 24. Defendant JPMORGAN did not exercise any due diligence on their part, and had they done so,
6 Plaintiff would have easily cured the alleged arrearages as her monthly income would prove to be sufficient
7 to satisfy the alleged debt.

8 25. On or about August 20, 2015, Defendant MTC, in its capacity as foreclosing trustee, allegedly
9 recorded a NOTS in the Marin County recorder's office, however, sent to Plaintiff an unrecorded version of
10 the document.

11 26. Plaintiff disputes its authenticity and whether it was ever filed.

12 27. A true and correct copy is attached herewith and incorporated fully.

13 28. The purported document was not even signed, however, had the printed name of Miguel Ochoa.

14 29. The document set a tentative sale date of the subject property on September 23, 2015, and will
15 proceed unless the Trustee and Defendant JPMORGAN are not lawfully restrained.

16 30. A Declaration of compliance with California Civil Code §2923.55(f) was not included with the filing
17 and alleged recording of the NOTS.

18 31. Plaintiff alleges that California Civil Code §2923.55(f) was not complied with, as mandated within
19 the language of the NOTS.

20 32. Despite the language of the NOD and NOTS filed against Plaintiff's Subject property, none of the
21 named Defendants used 'due diligence' to contact Plaintiff.

22 33. Plaintiff could have been contacted with only nominal effort, and in fact was trying herself to contact
23 Defendant JPMORGAN both before the recording of the NOD and after the recording.

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1 34. Plaintiff was fully available to meet with Defendants to explore foreclosure options prior to the
 2 recording of the NOD and NOTS, and in fact begged Defendant JPMORGAN to allow her to transfer the
 3 loan of her deceased sister into her name.

4 35. California Civil Code §2923.5 requires a lender to contact the borrower in person or by phone to
 5 assess the borrower's financial situation and explore options to prevent foreclosure before the lender may file
 6 a NOD or NOTS. The lender may not record an notice of default until 30 days after the initial contact is
 7 made or 30 days after satisfying the due diligence requirements to contact the borrower.

8 36. In *Mabry v. Superior Court*, 185 Cal. App. 4th 208, 235 (2010), the trial court erred when it ruled,
 9 that no private right of action existed under §2923.5, and that the Mabry's were required to tender all
 10 arrearages before enjoining a foreclosure proceeding. Six days before the rescheduled foreclosure sale date,
 11 the Mabry's filed a writ proceeding to the Court of Appeal.

12 37. The Court of Appeal reversed the trial court's judgment, holding that §2923.5 could be enforced by a
 13 private right of action, and that a borrower is not required to tender the full amount of mortgage indebtedness
 14 due as a prerequisite to bringing an action under §2923.5. In its examination of the relevant Civil Code
 15 sections relating to the borrower's right to be contacted by the lender prior to the recording of a notice of
 16 default, the court held that the remedy available for a lender's noncompliance with §2923.5 is the
 17 postponement of the foreclosure sale until the lender complies with the statute.

18 38. In the Instant case, Plaintiff has the means by which to a) tender a portion of the arrearages and b)
 19 assume the loan in its entirety.

20 39. If a notice of default has been recorded against a homeowner's property and the lender has not
 21 contacted them in person or by telephone to assess the borrower's financial situation and explore options to
 22 prevent foreclosure, the borrower has the right to sue the lender for violation of Civil Code §2923.5. Suit
 23 must be filed and the sale stopped before the foreclosure sale takes place. If the borrower waits until after
 24 the foreclosure sale has occurred, the sale will not be set aside by the court.

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40. Currently the sale of the subject property has not yet taken place, however, is scheduled for September 23, 2015, despite the NOTS document not being recorded.

⁴¹ If California Civil Code § 2932.5 is not complied with, then there is no valid notice of default, and without a valid notice of default, a foreclosure sale cannot proceed. See *Mabry v. Superior Court*, 185 Cal. App. 4th 208, 235 (2010). *Stov v. U.S. Bank*, 143 Cal. Rptr. 3d 694, 700 (2012).

42. The available, existing remedy is found in the ability of a court in § 2824g, subdivision (c) (1) (A), to postpone the sale until there has been compliance with § 2023.5. M.

43. The legislature intended to allow a private right of action under § 2923.5. *Id.* at 701.

44. The means of enforcing § 2932.5 are to postpone the foreclosure proceeding until the provisions of § 2932.5 have been fulfilled.

43. That by virtue of the method and manner of Defendants carrying out § 2922.3 and 2924 et seq., the foreclosure of the Subject Property is void ab initio as a matter of law.

⁴⁶ The foreclosure trustee's rights, powers and duties regarding the NOD and NOTS are strictly defined and limited by the deed of trust and governing statutes *Diediker v. Peelle Financial Corp.*, 60 Cal. App. 4th 288, 295 (1997).

WHEREFORE, Plaintiff prays for the following relief:

1. A temporary and Permanent Injunction on Defendants until the provisions set forth in Civil Code § 2932.5 are complied with.

2. Actual damages

3. Treble damages:

4. A \$2,500.00 statutory penalty:

5. Attorney fee awards

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1 6. A rescission of the NOD filed, and postponement of the non-judicial foreclosure sale currently
2 scheduled for September 23, 2015, and;

3 7. For any other relief the court deems warranted.

4 Respectfully submitted this 15th day of September, 2015

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MARIN COUNTY SUPERIOR COURT
 P.O. Box 4988
 San Rafael, CA 94913-4988

PLAINTIFF: Franken

CASE NO.

CV 150 3409

vs.

DEFENDANT: JP Morgan et al

NOTICE OF CASE
 MANAGEMENT CONFERENCE
 (CIVIL)

(Pursuant to Government Code Section 88800 et seq.)

Pursuant to Local Rule 1.3, the plaintiff must serve a copy of this Notice of Case Management Conference, a blank Case Management Statement (Judicial Council Form CM-110), a blank Notice of Settlement of Entire Cases (Judicial Council Form CM-200), and an Alternative Dispute Resolution (ADR) Informational Notice (CV-016) together with the complaint on all parties.

This case is assigned for all purposes to Judge

Franken Son

in Courtroom

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1. The parties/counsel to this action shall comply with the filing and service deadlines in Local Rule 1.5 and California Rule of Court 3.110, or appear at the Order to Show Cause hearing on the dates set forth below:

Failure to File Proof of Service

1/25/15 8:30 / 9:00 A.M.

Failure to Answer

1/26/15 8:30 / 9:00 A.M.

2. Parties must appear for Case Management Conference on

2/13/16 8:30 / 9:00 A.M.

3. The parties must be familiar with the case and be fully prepared to discuss the suitability of the case for binding or non-binding arbitration, mediation, or neutral case evaluation. Counsel must discuss ADR options with their clients prior to attending the Case Management Conference and should be prepared to discuss with the court their authority to participate in ADR.
4. Case Management Conference Statements must be filed with the court and served on all parties at least 15 calendar days before the Case Management Conference. (Late filing may result in the issuance of sanctions.)

Distribution: Original - Court File; Copy - Plaintiff

CV008

NOTICE OF CASE MANAGEMENT CONFERENCE (CIVIL)
 (Pursuant to Government Code § 88800 et seq.)

Rev. 7/15/15